

TOWN AND COUNTRY PLANNING DEPARTMENT

The 21st November, 1968

No. 3405-IDP-68/7413.—The Governor of Haryana is pleased to reconstitute the State Advisory Committee for the Town and Country Planning Department and appoint the following to its members:—

1. Shri Kartar Singh, M. L. A.
2. Shri Surjit Singh, M. L. A.
3. Shri Kishori Lal, M. L. A.
4. Shri Roop Lal Mehta, M. L. A.
5. Shri Hari Singh Saini, M. L. A.
6. Shri Gordhan Dass, M. L. A.
7. Shri Prabhu Ram, M. L. A.

The Director, Town and Country Planning, Haryana will act as convenor and non-member Secretary of the Committee.

2. The Committee will meet quarterly under the Chairmanship of the Minister-in-Charge. In case the Minister-in-Charge is not present at the meeting, one of the non-officials present at the meeting will preside over it as may be mutually agreed upon by the members present.

3. Three members present shall form a quorum for a meeting.

4. The term of the Committee will normally be two years but Government may by express order, reconstitute it at an earlier date.

5. The functions of the Committee will be to advise the Minister-in-Charge on general policy matters and specific programmes. The meeting will also afford a forum for ventilating public grievances relating to the Town and Country Planning Department. In respect of any matter intended to be raised at a meeting of the Committee, due notice shall be given to the Secretary to Government, Haryana, Town and Country Planning Department.

6. The headquarters of the Committee will be at Chandigarh.

7. The members of the Committee will draw T. A. as under:—

The Legislators in their *ex-officio* capacity under the Punjab Legislative Assembly (Allowances of members) Act, 1942 and Rules made thereunder, as in force at present or may be amended hereafter.

(b) The expenditure on account of T. A. bills of the Members of the Legislators (M.L.A's.) shall be debited against the budget allotment of the Director, Town and Country Planning under head "30—Public Health-A (2) Town Country Planning". The Secretary, Haryana Vidhan Sabha shall be the Controlling Officer and authorised to countersign their T. A. Bills.

(c) The Travelling Allowance for attending the meetings of the Committee shall be allowed to the members from their permanent place of residence to the place of the meeting. If, however, a member attends a meeting from a place other than the place of his permanent residence, T. A. shall be allowed to him either from the place of his residence or from where he attends the meeting whichever is less.

P. N. BHALLA, Secretary,

LABOUR DEPARTMENT

The 21st November, 1968

No. 10397-ASO-III-Lab-68/79022.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh in respect of the dispute between the workmen and the management of Municipal Committee, Sonepat.

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, CHANDIGARH

Reference No. 48 of 1968

between

THE WORKMEN AND THE MANAGEMENT OF MUNICIPAL COMMITTEE, SONEPAT

Present.—

Shri Narain Dass Garg, for the management.

Shri Jatinder Lal Sharma, for the workmen.

AWARD

The Deputy Commissioner, Rohtak in his Memorandum in the Budget Estimates of the Municipal Committee, Sonepat, for 1967-68, remarked as under :—

"iii-c. The following posts are also altogether unnecessary as there is practically no work on these posts, therefore, the posts be abolished forthwith :—

- (i) Head Clerk.
- (ii) Record Keeper.
- (iii) Agenda Clerk.
- (iv) Accounts Clerk."

On receipt of the said Memorandum, the Administrator of the Committee passed an order on 8th March, 1968, the relevant portion of which is re-produced as under :—

"As regards the reduction of the post of Head Clerk, I find that two officials, namely, Sarvshri Bansi Lal, the present Head Clerk and Bhagwan Singh, the Octroi Superintendent who has proceeded on leave after supersession of the M.C. are in identical scale of pay, i.e., 116—8—140—10—250. Shri Bhagwan Singh is junior to Shri Bansi Lal, so one month's wages in lieu of notice under section 45 of the Municipal Act may be paid to him. Since the post of the Head Clerk has been reduced, Shri Bansi Lal should take over as Octroi Superintendent. Draft orders be put up".

In pursuance of the above, the Municipal Committee admittedly served an order on Shri Bhagwan Singh which is No. 401 and is dated 18th March, 1968.

Shri Bhagwan Singh raised a dispute with regard to the termination of his services and treating the same as an industrial dispute presumably under Section 2-A of the Industrial Disputes Act, 1947, the Haryana Government referred the said dispute to this Tribunal for adjudication under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, *vide* their notification No. ID/RK 93-A-68 22164, dated 28th August, 1968. The exact item of dispute mentioned in the said notification reads as under :—

"Whether the termination of service of Shri Bhagwan Singh, Octroi Superintendent was justified and in order ? If not, to what relief is he entitled ?"

On receipt of the reference, usual notices were issued to the parties and in response to the same, the workman concerned filed a claim statement and the management filed their written statement to the same. The pleadings of the parties gave rise to two issues only which were framed by me on 4th September, 1968 and which read as under :—

- (1) Whether the Government could have made the present reference under the Industrial Disputes Act, 1947 ?
- (2) Whether the termination of service of Shri Bhagwan Singh, Octroi Superintendent was justified and in order ? If not, to what relief is he entitled ?

Parties were given opportunity to lead their evidence in respect of the said issues and after the conclusion of the same their representatives addressed their arguments to me. My findings on the said issues are as under :—

Issue No. 1. —The contention raised on behalf of the Municipal Committee is that the activities of the Octroi department of the Municipal Committee cannot possibly fall within the ambit of the word 'industry' as defined under Section 2-j of the Industrial Disputes Act, 1947. The said section reads as under :—

"2-j. 'Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen".

It is urged on behalf of the management that the activities of the Octroi department do not fall under any of the five heads, namely :—

"(1) Business, (2) trade, (3) undertaking, (4) manufacture and (5) calling of employers, and that it cannot, therefore, be termed as an 'industry'.

The contention of the workman on the other hand is that the Municipal Committee has several functions to perform, which are enumerated in various Sections of the Punjab Municipal Act. Most of those functions do fall within the scope of the words business, undertaking and calling of employers. It is urged that some of them also fall within the scope of trade and manufacture. It is further urged that if some of the functions of the Municipal Committee do fall in any of the terms, it must be held that the municipality is engaged in industry, and if for that purpose they collect taxes to constitute capital for the said industry, the workmen employed for the tax collection must be deemed to be employed in an industry and dispute between them and the Municipal Committee must in the circumstances be held to be an industrial dispute as envisaged by Section 2-k of the Industrial Disputes Act, 1947. There can be no doubt that under the Punjab Municipal Act a municipality has to perform several functions. A municipal fund is to be constituted under Section 51 and the manner in which the said fund is to be applied is given in Section 52 of the Act.

The Committee has to set apart certain amounts which are to be met in priority out of the said fund and they are mentioned in Sub-section (1) of the aforesaid Section. Sub-section (1) of the said Section deals with the various other items on which that fund is to be spent. Most of these items and particularly items a, b, c, g & j do in my opinion fall within the ambit of business, undertaking and calling. It is true that the municipal committees have to perform some functions which are regal in nature. In the city of Nagpur Corporation case (1960-I-LLJ-523) Their Lordships of the Supreme Court have summarized the law on this point at page 535 of the report. Item No. 3 of the said summary reads as under :—

- “(3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power”.

Evidently the collection of taxes for the purpose of performing various functions of the Municipal Committee which include the regal functions as also the other municipal functions does not exactly fall within the purview of regal functions. In the aforesaid case Their Lordship considered the nature of activities of the various departments of corporation including the Tax department and held that the Tax department as a whole must be deemed to be an industry. Although they gave two reasons for this purpose, they observed :

“ We would, however, prefer to sustain the finding on broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purpose of designating the Tax department as an industry or otherwise. The scheme of the Corporation Act is that Taxes and fees are collected in order to enable the Municipal Committee to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of ‘industry’, it would be illogical to exclude the Tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institution, as the services are rendered to the public, the Taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of ‘industry’, we should hold that the employees of the Tax department are also entitled to the benefits under the Act”.

In the Municipal Committee, Raikot *versus* Ram Lal Jain, a Division Bench of the Punjab High Court held that a dispute between an employee of the Octroi department of the municipality and the management of the said Municipality is an industrial dispute. The head note of the ruling reads as under :—

“ Held, that octroi duty or terminal tax together with other taxes enables a Municipal Committee to discharge its statutory functions which are predominantly covered by the definition of ‘industry’. An octroi peon is a workman in an industry, his dispute with the municipality can be referred to under Section 10(1)(c) of the Industrial Disputes Act.”

The management have drawn my attention to the case of Madras Gymkhana Club Employee, Union (1967-II-LLJ-720) and have replied on certain observations made by Their Lordships at page 731 of the report which are to the following effect :—

“ Therefore, the word ‘undertaking’ must be defined as

“ any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade”.

This is the test laid down in Banerji case (1953-I-LLJ-195) (*vide Supra*) and followed in Baroda Borough Municipality case (1957-I-LLJ-8). Its extension in the corporation case (1960-I-LLJ-523) (*vide Supra*) was unfortunate and contradicted the earlier cases.”

The contention of the management is that in the above-mentioned case Their Lordships have practically over-ruled the view taken by them in the case of City of Nagpur Corporation. I have carefully read both the rulings and I am definitely of the opinion that the earlier case of city of Nagpur has not been over-ruled and all that Their Lordships have held in the Gymkhana Club case is that the import of the word undertaking was perhaps too widely stated in the case of City of Nagpur and that the meanings of that word should be limited of to business or any work or project which one engages in or attempts as an enterprise analogous to business or trade. Gymkhana Club case does not in my opinion lay down that no function of any Municipality can possibly fall within the ambit of the word ‘industry’. On the other hand the two earlier cases, namely, Banerji case (1953-I-LLJ-195) and Baroda Borough Municipality (1957-I-LLJ-8) are relied upon in this case and both these cases related to the disputes between the workmen of certain departments of the Municipal Committees and the managements of the said committees. On applying various tests Their Lordships came to the conclusion that the activities of Gymkhana Club could not possibly fall within the definition of industry. But this finding was arrived at on assessment of the peculiar nature of the activities of the said club. Most of the activities of the municipalities under the Punjab Municipal Act do fall within the ambit of the word ‘industry’ and applying the tests laid down in the city of Nagpur case for the Tax department of Corporation of Nagpur it must be held that the activities of the Tax department of the Committees under the Punjab Municipal Act do fall within the ambit of the definition of the same. This proposition has been firmly laid down in the ruling of the Division Bench of the Punjab High Court to which I have made a reference in the earlier part of this award. For the reasons given above, I find that the activities of the Octroi department of the municipality do fall within the ambit of the word ‘industry’ and that the dispute in question is an industrial dispute. The issue is accordingly decided against the management.

Issue No. 2.—It appears to me that the services of the workman concerned have been terminated by Municipal Committee in utter ignorance of the industrial law as if it never existed. In the written statement the Municipality has urged that they retrenched the workman concerned, i.e., Bahagwan Singh. It is not denied that the Committee did not comply in this respect with the provisions of Section 25-F of the Industrial Department Act, 1947. They did not pay the retrenchment compensation to the workman concerned nor did they issue any notice to him as required by Sub-section (a) of the said Section. The Municipal Committee thought that Bhagwan Singh was

junior to Bansi Lal but they ignored that seniority and juniority was to be considered *qua* persons in the same department or between those holding similar jobs. Bansi Lal was the Head Clerk of the Municipal Committee while Shri Bhagwan Singh was an Octroi Superintendent. Bansi Lal was not senior in service so far as the post of Superintendent of Octroi Department was concerned. The Municipal Committee also did not comply with the Punjab Industrial Dispute rules and did not send any proper notices to the authorities of the Labour Department or to the Government. No compliance having been made either with the rules or with the provisions of Section 25-F and Section 25-G of the Act, the retrenchment must be held to be totally void and totally unjustified. The issue is decided against the management. In the result the order of the Municipal Committee terminating the services of Bhagwan Singh is quashed. The Municipal Committee is directed to reinstate Bhagwan Singh with continuity of and without any break in his service. The Municipal Committee is further directed to pay full back wages to Bhagwan Singh from the date his services were terminated to the date he is reinstated. The reinstatement of Bhagwan Singh and payment of full back wages to him should be made within one month from the date of the publication of this award in the official gazette.

No order as to costs.

Dated 12th November, 1968.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 1230. dated Chandigarh, the 13th November, 1968.

The award (four copies) be submitted to the Secretary to Government, Haryana, Labour Department, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K.L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

The 28th November, 1968

No. 10620-ASOIII-Lab-68/29703.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M's Escorts Ltd., Plant No. 2, Faridabad:—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 74 of 1966

between

SHRI JAGDISH CHANDER BHATIA, WORKMAN, AND THE MANAGEMENT OF M'S ESCORTS LTD., PLANT NO. 2, FARIDABAD

Present—Shri Roshan Lal Sharma, for the workman.
Shri B.R. Ghai, for the management.

AWARD

Shri Jagdish Chander Bhatia was in the service of M's Escorts Ltd., Plant No. 2, Methura Road, Faridabad. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Notification No. 126-SFIILab-66/3639, dated 22nd December, 1966:—

Whether the termination of the services of Shri Jagdish Chander Bhatia was justified and in order?
If not, to what relief exact compensation he is entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the claimant and the management filed their written statement. It is submitted on behalf of the claimant that he joined the respondent concern some times in August, 1965, and he worked as a temporary helper from 1st January, 1966 to 31st March, 1966 and he was then taken against a regular vacancy with effect from 1st April, 1966 and was kept on probation for a period of three months as per standing orders applicable to the respondent. It is alleged that on the completion of the probationary period of three months the claimant was neither confirmed nor any order was issued extending his period of probation and for this reason under the provisions of clause 4(O) of the standing orders his probationary period was automatically extended for another three months up to 30th September, 1966, but the management wrongfully terminated his services with effect from 7th July, 1966, without paying him his wages for the month of June, 1966 and 7 days of the month of July, 1966 and his other dues. It is alleged that the termination of the services of the claimant contravened the provisions of clause 42 of the standing orders.

The management in the written statement have pleaded that the applicant was appointed as a temporary helper for a period of three months on 1st January, 1966 and thereafter he was appointed as a helper in un-skilled category on probation for three months with effect from 1st April, 1966 and it was specifically stipulated in the letter of appointment that on the satisfactory completion of the period of probation the claimant would be confirmed and a separate letter would be issued to him to that effect but if work was not found satisfactory then his services were liable to be terminated during the period of probation without specifying any reason. It is alleged that the claimant signed a duplicate copy of the letter of appointment in token of having accepted the terms and

conditions of his service. It is further alleged that during the probationary period the work of the claimant did not come up to the requisite standard and he was not considered fit to be confirmed and for this reason his services were terminated *vide* management letter dated 7th July, 1966. It is denied that there are any standing orders in the respondent concern or that there was any condition that immediately on the expiry of the probationary period the claimant would be automatically confirmed or his probationary period would stand extended. A technical objection has also been raised that the notice of demand submitted by the General Labour Union on behalf of the claimant was not bona fide and it did not give any ground on which the demand for reinstatement was raised. It is also pleaded that there is no collective dispute between the workman and the management of the respondent concern and for this reason the order of reference was not valid because it does not envisage any individual dispute. The termination of the services of the claimant is said to be strictly in accordance with the terms of his letter of appointment and therefore there was no basis or justification for raising the present dispute and this Court has no jurisdiction because there is no industrial dispute and secondly because the question as to whether the probationer was entitled to be confirmed or not, cannot be decided by this Court as this is purely a managerial function.

My learned predecessor Shri Hans Raj Gupta framed the necessary issues but before he could record the evidence, he was transferred. I recorded the evidence produced by the parties on the issues framed by my learned predecessor but before the award could be given it was held by the High Court in Civil Writ Petition No. 1575 of 1966 in the case of M/s Haryana Co-operative Transport Limited *vs.* State of Punjab that the appointment of my learned predecessor Shri Hans Raj Gupta was not valid. In consequence of this decision the proceedings conducted by my learned predecessor Shri Hans Raj Gupta could not be said to be valid. *Dc novo* proceedings were therefore taken. The parties did not desire to file any fresh statement of claim or written statement. The following issues were framed by me :—

- (1) Whether the present dispute is not an industrial dispute within the meaning of the Industrial Disputes Act, 1947, and the present reference is not competent?
- (2) Whether the termination of the services of Shri Jagdish Chander was justified and in order? If not, to what relief he is entitled?

The management have examined Shri V.K. Sud, their Employment Officer, and Shri Kuldip Mehta, their Engineer. The workman appeared as his own witness in support of his allegations and did not produce any other witness. I have heard the learned representatives of the parties and my findings are as under :—

Issue No. 1.—If any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman and the workman concerned is aggrieved by reason of the termination of his services, he can raise a dispute under section 2A of the Industrial Disputes Act, and it is deemed to be an industrial dispute even if no other workman or any union of workman is a party to the dispute. The expression "industrial dispute" is defined in clause K of section 2 of the Industrial Disputes Act and it means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Thus by virtue of section 2A of the Industrial Disputes Act and an individual dispute of a workman even if not sponsored by the other workmen or the union of workmen is deemed to be a dispute between the employer and the workmen. In view of the definition of the industrial dispute as given in clause (K) of section 2 of the Industrial Disputes Act, the order of reference cannot be said to be wrong and it cannot be said that there is no industrial dispute between the parties. I find this issue in favour of the workman.

Issue No. 2.—The main contention of the learned representatives of the management is that the workman on his own showing had not been made permanent when his services were dispensed with and therefore he cannot question the validity of the order of the management terminating his service. It is submitted that the claimant was previously employed in a casual capacity some time in July, 1965 and he was taken as a temporary helper with effect from 1st January, 1966. According to the management the claimant was appointed against a regular vacancy only on 1st April, 1966 and was kept on probation for a period of three months. It is submitted that this period of probation expired on 30th June, 1966 and the services of the claimant were terminated by the management,—*vide* the order dated 7th July, 1966 strictly in accordance with the terms of his appointment and for this reason the order of the management cannot be questioned. Reliance has been placed upon 1956-II-LLJ-444 in which it has been held by the Supreme Court that an Industrial Tribunal can not ignore altogether an existing agreement or existing obligation for no rhyme or reason whatsoever. Reliance has also been placed upon another Supreme Court Authority cited as 1964-I-LLJ, page 9 in which it has been held that the position in law is that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period, if his services have neither been terminated nor he is confirmed. The learned representative has cited a large number of other authorities in support of this proposition of law.

I have carefully gone through the authorities cited by the learned representatives and in my opinion all of them are distinguishable. The main distinction between the authorities cited in behalf of the management and the facts of the present case is that it is not even the case of the management that the workman was appointed for the first time on 1st April, 1966 on a work which he had not done before and for this reason he was kept on probation to enable the management to form an opinion as to whether the claimant was fit for a work for which he was being appointed. The management have filed a statement showing the total period for which the claimant had already worked with them even before his so called regular appointment against a regular vacancy. This statement is marked Ex. M. W. 1/1. It shows that the claimant was first appointed as a casual workman in the month of July, 1965. According to this statement he worked for 27 days in July, 7½ days in August, 22 days in September, 22½ days in October and November each and 19½ days in the year 1965. He was then taken as a temporary workman and worked as such for 22 days in January, 4 days in February and 8 days in March, 1966. Thus we find that the claimant had already worked for as many as 155 days and there is no evidence on the record to show that the work which was given to the claimant when he was appointed against a regular vacancy on 1st April, 1966 was of a different type and therefore he was kept on probation in order to see whether he was capable of satisfactorily doing the work for which he was being appointed on a regular basis. Moreover the management did not terminate the services

of the claimant immediately on the expiry of the so called period of probation but allowed him to continue up to 7th July, 1966 and then suddenly terminated his services without any rhyme and reason. The claimant had been in the service of the respondent except with small breaks for almost one year by then. If the contention of the learned representative of the management is to be accepted, it would mean that the management on appointing a workman on probation can keep him on probation for an indefinite period simply by not issuing any formal letter confirming him in service and thus deprive him of his valuable right to agitate against the wrongful termination of his services before the appropriate authorities.

The management have not produced any certified standing orders. Admittedly more than 100 workmen are in their employment and if the respondent concern has no certified standing orders then they would be governed by the Model Standing Orders framed under the Industrial Employment Standing Orders Punjab Rules, 1949. The object of the Industrial Employment Standing Orders Act, 1946, is to require employers in industrial establishments to define with sufficient precision, the conditions of employment under them and to make the said conditions known to workmen employed by them. If the contention of the learned representative of the management is to be accepted that the management can keep a workman as a probationer for an indefinite period then the very object of the Industrial Employment Standing Orders Act, 1946, would be frustrated. Clause C of Rule 2 of the Model Standing Orders defines a probationer as under :—

"Probationer is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may at any time during the probation period of three months be reverted to his old permanent post".

The history of the service of the claimant in the respondent concern shows that his category was being changed from time to time simply to deprive him of a chance to claim that by reason of satisfactorily service he was entitled to be confirmed. The claimant was first given the designation of a casual worker and after he had worked for almost six months in this capacity, his designation was changed as a temporary worker and he was kept as such for three months. It is not alleged on behalf of the management that the work of the claimant was unsatisfactory even during the period he worked as a casual worker or as a temporary worker. As already pointed out it is also not the case of the management that when the claimant was taken on a regular basis on 1st April, 1966, the work which he was expected to do was of a different type and therefore the management wanted to satisfy themselves that the claimant would be capable of doing the work which he was expected to do as a regular worker.

The learned representative of the management has submitted that the chart Ext. M. W. 1/1 would show that during the three months the claimant was appointed as a regular worker, his attendance was poor and therefore the management did not consider him to be a good worker. There is no force in this contention because according to this chart the claimant worked only for 4 days in the month of February, and 8 days in the month of March before he was appointed on regular basis in the month of April, 1966. According to the Chart Ex.M.W. 1/1 the claimant was quite a regular worker from July, 1965, up to January, 1966. His attendance has fallen from the month of February, 1966. No opportunity has been given to the claimant to show as to why his attendance was not regular and if frequent absence from duty was the real cause for considering the workman to be inefficient, it is not clear why his service was not terminated on the expiry of the period of his so called probation on 30th June, 1966. It appears that in reality the claimant was in regular service from the very beginning, i.e., from July, 1965, and the management first designated him as a casual worker, then changed his designation as a temporary worker and then called him a probationer so that they could shunt him out at their sweet will. The management can not be permitted to defeat the provisions of his Industrial law in this manner. It has been held in 1962-II-LLJ , page 360, that it is no longer open to the industrial employer to contend that under the ordinary law of contract between master and servant, it is within his power to terminate the services of even temporary workman for a misconduct committed by him without holding an enquiry or that the order of discharge can be passed in accordance with the terms of the contract of employment. If the claimant was habitually neglecting his work by remaining absent for long periods without any sufficient cause then it was incumbent upon the management to frame a charge against him and give him an opportunity to show cause before terminating his services. After all the claimant was not a fresh employee whose ability or capacity to work was not known to the management. As already observed he had already put in more than nine months of service when he was supposed to have been appointed on probation for three months. Under the circumstances of this case the terms and conditions of the letter of appointment, dated 8th April, 1966, Ex R. 2/1, by which he was appointed on a regular basis with effect from 1st April, 1966, cannot therefore be strictly enforced and the order terminating the services of the claimant Sh. Jagdish Chander Bhatia cannot be said to be justified or in order. He is, therefore, entitled to be reinstated with continuity of service and full back wages.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

Dated the 25th October, 1968.

No. 1983, dated the 18th November, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

Dated the 25th October, 1968.

No. 10612-ASOIII-Lab-68/29706.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M's Escorts (P) Ltd., Plant II, Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 122 of 1967

between

SHRI JAGAN NATH WORKMAN AND THE MANAGEMENT OF M/S ESCORTS (P) LTD., PLANT II, FARIDABAD

Present :—

Shri Ashok Kumar, for the workman.
Shri B. R. Ghabir, for the management.

AWARD

Shri Jagan Nath was employed as a Fitter in M/s Escorts (P) Ltd., Plant II, N.I.T., Faridabad. His services were terminated on 23rd August, 1967. The workman is aggrieved by reason of the termination of his services and this gave rise to an industrial dispute. The President of India in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following disputes to this Court for adjudication,—*vide* Government Gazette Notification No. 559-SF-III-Lab-67, dated 2nd December, 1967 :—

Whether the termination of services of Shri Jagan Nath Fitter was justified and in order ? If not to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which the workman filed his statement of claim and the management filed their rejoinder to the same. A preliminary objection has been raised on behalf of the management that there is no industrial dispute between the workmen and the answering respondent. It is alleged that the subject-matter of dispute is only an individual matter and has not been espoused by an appreciable number of workmen. It is further alleged that the claim Statement has been filed by Shri Roshan Lal Sharma, President of the General Labour Union, N.I.T., Faridabad who is not the claimant and therefore the statement of claim has not been validly filed. It is further alleged that the workman settled his account with the management on 30th August, 1967 in full and final settlement of all his claims and therefore now there is no dispute between the parties and the workman is estopped from making any claim on principles of estoppel and waiver.

On merits it is pleaded that the workman was appointed as a fitter on probation with effect from 18th October, 1966 for a period of three months which was subsequently extended. It is alleged that the letter of appointment of the workmen provided that during the period of initial probation or extended probation, his services could be terminated by either side without assigning any reason and without any notice or payment of compensation in lieu of notice. Letter of appointment also provided that unless the workman was confirmed in writing he shall not be deemed to have been confirmed. It is alleged that duplicate copy of the letter of appointment was signed by the workmen in acceptance of the terms of his employment. It is further alleged that since his services did not come up to the required standard he was not found suitable for confirmation and so no letter confirming him in service was issued and it was also not necessary to hold any enquiry as there was no allegation of gross misconduct against him. It is pleaded that the termination of the services of the workman was in accordance with the contract of service and his services were terminated while he was still a probationer. The pleadings of the parties gave rise to the following issues—

- (1) Whether the claimant was a member of the General Labour Union before the present dispute arose ?
- (2) If so whether the Union was not competent to represent the case of the claimant for the purpose of raising the present dispute ?
- (3) Whether the reference is not valid for the reasons mentioned in para No. 1 of the preliminary objections ?
- (4) Whether claimant signed the payment voucher acknowledging the receipt of Rs 174.34 Paise in full and final settlement of his claim under coercion and pressure ?
- (5) Whether the claimant was still on probation when his services were terminated ?
- (6) If not whether the termination of his services is justified and in order ?
- (7) If not, to what relief is he entitled ?

I have heard the learned representative of the parties and have gone through the record. My findings are as under :—

Issue No. 1.—The claimant Shri Jagan Nath appeared as a witness in support of his case. His statement was recorded on 6th February, 1968. He has stated that he became a member of the General Labour Union about a year back and filled up a membership form, although he did not remember the date or the month in which he became a member. Shri Roshan Lal Sharma, President of the Union has also stated that the claimant became member of the Union since last year. Although he made a request that an opportunity be given to him to produce the register of membership to corroborate the evidence of the claimant that he had in fact become a member of the General Labour Union as stated by him but no register was produced and the learned representative of the management submitted that the oral testimony of the claimant that he has become a member of the General Labour Union about a year back could not be relied upon and adverse influence should be drawn against him because the membership register has not been produced although an opportunity was given to him to produce their register. In my opinion it is not possible to disbelieve the testimony of the claimant simply on the ground that the President of the Union has not cared to produce the membership register. Moreover this issue is not very

material because the present dispute has been raised under section 2A of the Industrial Disputes Act and it has not been sponsored by the Union. Under the provisions of section 2A of the Industrial Disputes Act a workman aggrieved by reason of the termination of his services is competent to raise an industrial dispute even if it is not sponsored by a substantial number of workmen or by the union. I, therefore, find this issue in favour of the claimant.

Issue No. 2.—As already pointed out the present dispute has been raised by the aggrieved workman himself and Shri Roshan Lal Sharma, President of the General Labour Union is simply representing him in these proceedings. There is no doubt that under the provisions of clause A of sub-section (1) of Section 36 of the Industrial Disputes Act, an officer of a registered Trade Union of which the workman is a member can represent him, in any proceedings under the said Act. I therefore find this issue also in favour of the workman.

Issue No. 3.—The preliminary objection in para No. 1 of the written statement is that the subject-matter of dispute is only an individual matter and has not been espoused by any appreciable number of workmen so there is no industrial dispute between the workman and the management and for this reason the reference is not valid. There is no substance in this objection either because under the provisions of section 2A of the Industrial Disputes Act, a workman aggrieved by reason of the termination of his services can raise an industrial dispute although no other workman or union of workmen is a party to the dispute. The order of reference can not therefore be said to be invalid on this ground. I find this issue also in favour of the workman.

Issue No. 4.—It is proved that the claimant signed the voucher Ex. M. 1 in which it is recorded that he had received Rs 174.34 P in full and final settlement of his claim. The claimant has explained in his evidence that he did not wish to receive any money in full and final settlement but Shri Vash Dev pressed him to settle all his accounts and he was not even given a gate pass for the purpose of going out. The claimant states that he hid himself in the latrine but the manager found him there and again pressed him to sign the pay roll and receive of his dues and so he had no other alternative but to receive the money and signed his pay roll under pressure. It is not possible to believe this cock and bull story but even if it is held that no pressure was put upon the claimant to sign the voucher, Ex. M. 1 still it is not possible to hold that he is barred from raising the present dispute because he signed the voucher Ex. M. 1 and purported to receive Rs 174.34 paise in full and final settlement of his claim. According to the details given in Voucher, Ex. M. 1 Rs 174.34 P were due to the applicant on account of his basic pay, dearness allowance, etc. In case the termination of the services of the claimant was not justified and in order the management have not paid anything extra to the workman in consideration of which the workman can be said to have relinquished his claim for reinstatement or compensation for loss of service. It cannot therefore be said that by merely signing the voucher, Ex. M. 1 the claimant relinquished his claim for reinstatement and therefore he is estopped from raising the present dispute. I find this issue accordingly.

Issues Nos. 5 and 6.—These are the main issues which require determination. Shri Vash Dev, Production Manager in the respondent concern has stated that the claimant was appointed as a Fitter on probation with effect from 18th October, 1966,—*vide* letter of appointment Ex. M. 2, dated 11th November, 1966. He has stated that the period of probation of the claimant was extended up to 30th June, 1967,—*vide* letter Ex. M. 6, dated 29th March, 1967 but the work of the claimant did not come up to the mark and so he was not confirmed and his services were terminated,—*vide* letter Ex. M. 3, dated 23rd August, 1967, although his period of probation was only up to 30th June, 1967.

The learned representatives of the management have submitted that it is clearly provided in the letter of appointment dated 11th November, 1966, Ex. M. 2 that the claimant would be deemed to continue on probation till he is confirmed in writing. A large number of authorities have been cited in support of the proposition that there is no automatic confirmation. The authorities cited are A.I.R. 1957 Punjab 191, 1963-I-LLJ-671 (Supreme Court), 1968 (16) FLR 29 (Supreme Court) and 1962 (5) FLR (Calcutta). I have gone through these authorities and in my opinion they are all distinguishable. The management can not deprive the workman of the protection given to him by the Industrial Legislation against wrongful termination of his services by simply providing in the letter of appointment that his services are liable to be terminated at any time without giving any reason till he is confirmed in writing. Moreover the terms and conditions in the letter of appointment are to some extent contradictory. It is provided in the letter of appointment that the claimant was being appointed on probation for a period of three months which could be extended up to six months and that during the period of initial probation or extended probation the services could be terminated by either side without assigning any reason and without any notice or payment of compensation in lieu of notice. But in the very next line it is provided that the workman would not be deemed to be confirmed unless he is confirmed in writing. This means that the workman would continue to remain on probation for an indefinite period till he is confirmed in writing and the previous terms that he was being appointed on probation for a period of three months which period is liable to be extended up to six months becomes meaningless. Moreover the management is admittedly employing more than 100 workmen and they must be having certified standing orders. The standing orders constitute the condition of service of the workman and the management have not produced their certified standing orders in order to prove that they are entitled to keep their workmen on probation for an indefinite period in the manner suggested by their learned representatives.

The management have also not led any evidence to prove that their action terminating the services of the claimant was bona fide. According to the terms of the letter of appointment the claimant was appointed on probation for a period of three months, the date of appointment being 18th October, 1966. Thus this period of probation expired on 17th January, 1967. There is no evidence that during this period of three months the management could not judge his work properly and therefore it was considered desirable to extend his period of probation. Even if it be held that the management is the sole judge for the purpose of deciding as to whether the work of the workman is up to the mark and they are not required to give any reason for deciding as to whether the workman should be confirmed or not, we find that the management did not take any action immediately on the expiry of the extended period of probation. The letter by which the period of probation was extended up to 30th June, 1967 is dated 29th March, 1967 and even on the expiry of the period of this extended probation the services of the claimant were not terminated on the ground that his work was not up to the mark. As already pointed out his services were terminated only on 23rd August, 1967. There is absolutely no explanation for this inordinate delay on the part of the management for coming to the conclusion that it was not worthwhile to keep the claimant in service. There is no evidence that the workman was ever informed that his work was not satisfactory and that he

was being given opportunity to improve his work and that his services had to be terminated because the workman was not capable of improving his work. In my opinion therefore it can not be held that the claimant was still on probation when his services were terminated and that the termination of his services was justified and in order. He is, therefore, entitled to be reinstated with full back wages and continuity of services.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated 1st November, 1968.

No. 2004, dated 18th November, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 1st November, 1968.

No. 10613-ASOIII-Lab-68/29709.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 the Government of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Laldee (P) Ltd., Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No 10 of 1968

between

SHRI NASIRUDDIN, WORKMAN AND THE MANAGEMENT OF M/s. LALDEE (P) LTD.,
FARIDABAD

Present.—

Shri R. L. Sharma, for the workmen.

Shri R. P. Tandon, for the management.

AWARD

Shri Nasiruddin was in the service of M/s. Laldee (P) Ltd., Faridabad. His services were terminated and this gave rise to an Industrial Dispute. The President of India in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. ID/FD/219F/1563, dated 17th January, 1968.

Whether the termination of services of Shri Nasiruddin was justified and in order. If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which the workman filed a statement of claim and the management filed their written statement. On behalf of the management it is pleased that the claimant was appointed on 27th August, 1966 as a helper and he was absent from duty without leave from 7th May, 1967 to 24th May, 1967 and thus his name was struck off from the muster roll in pursuance of clause 16F of the certified standing orders. The following issues were framed.

1. Whether the claimant Shri Nasiruddin remained absent from duty with effect from 7th May, 1967, up to 24th May, 1967 and as such he is deemed to have left the services of his own accord and his services could be terminated under the rule 16 F of the certified standing orders?
2. Whether the termination of services of Shri Nasiruddin was justified and in order. If not to what relief is he entitled?

The management have produced Shri K. C. Mayar, M. W. 1, Technical Director of the respondent concern. He has stated after referring to the attendance register that the claimant was absent from 7th May, 1967 onwards without leave and that on 25th May, 1967 his name was struck off from the rolls in pursuance to clause 16 F of the certified standing orders copy of which is Ex. M. 1. The claimant has not appeared in his evidence to explain as to whether he was absent without leave. His representative has made a statement that he has no instructions from him although a number of opportunities were given to him to produce evidence. Under these circumstances there is no reason to disbelieve the version of the management that the claimant was absent without leave and so it must hold that his services have been rightly terminated. I give my award accordingly.

No order as to costs.

Dated 5th September, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 1700, dated 25th September, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL.

Dated 5th September, 1968.

Presiding Officer,
Labour Court, Faridabad.

No. 10610-ASO III-Lab-68 29712.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M. s. Panipat Cooperative Sugar Mills, Ltd., Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

References Nos. 45 of 1968, 60 of 1968 and 68 of 1968

Between

THE WORKMEN AND THE MANAGEMENT OF M. S. PANIPAT COOPERATIVE SUGAR MILLS, LTD., PANIPAT

Present :

Shri Raghbir Singh, for the workmen.

Shri Isa Dass, General Manager, for the management.

AWARD

This order will dispose off 3 connected references Nos. 45, 60 and 68 of 1968. The questions involved for determination in all the three references are the same, therefore with the consent of the parties the proceedings in all the three references were consolidated.

The facts of the case briefly stated are that Sarvshri Swaran Singh, Kimti Lal, Maru, Ram Kishan, Chatru, Sukhbira, Nirmal, Suresh Chand, Shiv Dayal, Pritam Singh, Sardara Singh, Sudarshan, Bhola, Mohinder Lal, Jagdish Singh, Chaman Lal, Des Raj, Mansa Ram, Raghbir Chand, Shiv Dutt, Mahesh Mohan, Sadhu Ram, Zila Singh, Ratti Ram, Rameshwar Dass, Kanshi Ram, Surat Singh, and Jai Bhagwan were in the service of M. s. Panipat Cooperative Sugar Mills, Ltd., Panipat. Their services were terminated from time to time and this gave rise to an industrial dispute.

The case of Sarvshri Swaran Singh, Kimti Lal, Maru, Ram Kishan, Chatru, Sukhbira, Nirmal, Suresh Chand, Shiv Dayal, Pritam Singh were espoused by the Sugar Mills Mazdoor Sangh, Panipat and the question regarding the validity of the termination of their services was referred to this Court for adjudication,—*vide* Government Gazette Notification No. ID KL 13-B/68 12018, dated 7th May, 1968.

The case of Sarvshri Sardara Singh, Sudarshan, Bhola, Mohinder Lal, Jagdish Singh, Chaman Lal, Des Raj, Mansa Ram, Raghbir Chand, Shiv Dutt, Mahesh Mohan, Sadhu Ram, Zila Singh, Ratti Ram, Rameshwar Dass, Kanshi Ram and Surat Singh were espoused by Sugar Mills Mazdoor Sabha, Panipat and the question regarding the validity of the termination of their services was referred to this Court,—*vide* Government Gazette Notification No. ID KNL 13-C 68 15931, dated 27th June, 1968.

As regards Shri Jai Bhagwan workman, he took up his own case and the question of validity of the termination of his services was referred to this Court,—*vide* Government Gazette Notification No. ID KNL 13-C 68/19894, dated 25th July, 1968.

Usual notices were issued to the parties in each reference. Statements of claim were filed on behalf of the workmen and the management filed their written statements. The following issues arose from the pleadings of the parties.

In Reference No. 45 of 1968—

Whether the claimants were temporary hands employed for the season and for this reason their services could be terminated on the close of the season and they have no right to the employment in the next season ?

In Reference No. 60 of 1968—

(1) Whether the claimants except Shri Mansa Ram were temporary hands employed for the season and for this reason their services could be terminated on the close of the season and they have no right to the employment in the next season ?

(2) Whether Shri Chaman Lal although employed as a temporary workman continuously remained in service from the date of appointment up to the date of termination ?

(3) Whether the termination of the services of Shri Mansa Ram claimant was justified on account of his long absence from duty in the season 1966-67 although he was a permanent seasonal workman ?

In Reference No. 68 of 1968—

- (1) Whether the claimant Shri Jai Bhagwan was appointed on a purely temporary basis for the season 1966-67 only and for this reason the termination of his services is justified ?
- (2) If the above issue is not proved to what relief is the claimant entitled ?

Issue No. 1 in all the three References—

Shri S. S. Chowhan, Head Time Keeper, has appeared as a witness on behalf of the management. He has proved the charts Exhibit M.W. 1/1 and Exhibit M.W. 1/2 prepared under the direction of the court giving the date of appointment, the job held and the cadre of the job of each workman. He has stated that the letters of appointment in the form Exhibit M.W. 1/4 were issued in favour of each of the claimants except Shri Mansa Ram. The witness has proved letters of appointment Exhibit M.W. 1/5 to Exhibit M.W. 1/29 which has been issued in favour of the claimants, except Sarvshri Mahesh Mohan and Ratti Ram. As regards these two workmen, it is stated that their letters of appointment were not readily traceable.

It is submitted on behalf of the management that except Shri Mansa Ram all other workmen were specifically appointed on temporary basis as proved by the letters of appointment issued in their favour and therefore their services could be terminated without giving them any notice and the termination of their service was justified.

I have carefully considered the submissions of the learned representative of the management and in my opinion there is no force in the contention of the management because the claimants (except Shri Mansa Ram) were not engaged for work of a temporary or casual nature or to fill in a temporary need of extra hands or temporary jobs. The charts Exhibit M.W. 1/1 and Exhibit M.W. 1/2 show that these workmen were appointed against the seasonal vacancies and on the termination of their appointment substitutes were appointed. In the case of Shri Jai Bhagwan claimant this fact is admitted in the written statement. It is therefore not possible to appreciate how these workmen could be termed as temporary workmen. The term temporary workmen has been defined in the certified standing orders of the respondent mill. In clause (iii) under the heading B Classification of workmen, a temporary workman is defined as the one—

- (i) “who is engaged for a work of a temporary or a casual nature or to fill in temporary need of extra hands or temporary job”.

The chart Exhibit M.W. 1/1 and Exhibit M.W. 1/2 show that all these workmen were appointed against seasonal posts which continued from one season to other season and it was only for this reason that their substitutes were appointed when their services were terminated. It would not therefore be correct to hold that these workmen could possibly fall within the definition of “temporary workmen” as given in the certified standing orders because the work for which they were appointed was not of a temporary or casual nature and for this reason the termination of their services could not be justified.

Issue No. 2 in Reference No. 60 of 1968 —

As regards the case of Shri Chaman Lal, Hammerman, it has been proved that he was appointed on 16th December, 1965. His services were continued up to 5th December, 1967. It is true that there were as many as four breaks in his service but it is admitted that the reason for the termination of his services was not that the work against which he was appointed had come to an end and there was no need to keep him in service. It is admitted that on the very next day, i.e. 6th December, 1967 the job of Hammerman was offered to one Shri Taka. This means that Shri Chaman Lal could be continued in service and therefore it cannot be said that the termination of his services was also justified and in order.

Issue No. 3 in Reference No. 60 of 1968—

The case of Shri Mansa Ram claimant stands on a somewhat different footing. The reason for the termination of his service is said to be long absence from duty in the season 1966-67. It is admitted that no notice was given to him to show cause nor any enquiry was held against him. It is pleaded that according to the explanation to clause (1) under the heading M—Special conditions governing employment of seasonal Workmen, a workman who remains absent during the second half of the last preceding season without authority and who has not been validly dismissed can be allowed to resume duty by the management in the current season only if his absence has been condoned by the management and since in the case of Shri Mansa Ram his unauthorised absence was not condoned, therefore, it cannot be said that he had a right to be called for duty in the next season. This submission is correct but then it was necessary that a notice should have been issued to the workman concerned intimating him that by reason of his unauthorised absence during the second half of the last preceding season, he was not being called for the next season. It would have been then open to the workmen concerned to explain the reasons for his absence and the management could consider whether in view of the explanation tendered by the workman his absence should be condoned or not. The management must have some material before them for coming to the conclusion whether the absence should be condoned or not and therefore it was necessary for them to give a notice to the workmen concerned. Admittedly this has not been done, and so the omission on the part of the management to allow duty to Mansa Ram in the next season cannot also be said to be justified.

As a result of my findings above, I hold that the termination of the services of the workmen who are parties in all the three references Nos. 45, 60 and 68 of 1968 was not justified and in order and they are entitled to be reinstated with continuity of service.

As regards the back wages the General Manager on behalf of the respondent mill submitted that the services of the claimants were terminated bona fide in accordance with the terms and conditions of the letters of appointment issued in their favour and this was also the past practice. He, therefore, strongly opposed the prayer of the claimant for back wages.

I have carefully considered the question as to whether under the circumstances of the case the claimants should be allowed back wages. The submission of the General Manager that there was no *mala fide* intention against the claimants is correct but there is also no denying the fact that the workmen have suffered on account of the action of the management which has not been found to be in accordance with law and there is absolutely no reason as to why the workmen should be made to suffer on account of the wrongful action of the management. In my opinion, therefore, the workmen are entitled to get such back wages which they would have earned if their services had not been wrongfully terminated. However taking into consideration all the circumstances of the case leave the parties to bear their own costs.

Dated the 12th November, 1968.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2002, dated the 18th November, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL.

Presiding Officer,
Labour Court, Faridabad.

Dated the 12th November, 1968.

No. 10621-ASOIII-Lab-68/29715.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/S Giri Printers, Ambala City, through the Proprietor Shri. S.L. Bhatia :—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 52 of 1968

between

SHRI RAM NATH, WORKMAN AND THE MANAGEMENT OF M/S GIRI PRINTERS (THROUGH THE PROPRIETOR SHRI S.L. BHATIA), AMBALA CITY

Present :—

Shri Madhu Sudan Saran Cowshish, for the workman.

Shri Darshan Singh Rikhi, for the management.

AWARD

Shri Ram Nath was serving as a Compositor with M/s Giri Printers (through the Proprietor Shri S.L. Bhatia), Ambala City. His services were terminated on account of an alleged misconduct. This gave rise to an industrial dispute and the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. ID/UMB/187-A-68, dated 7th June, 1968 :—

Whether the termination of services of Shri Ram Nath Soni was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. It is pleaded on behalf of the management that the workman concerned quarrelled with his co-workers, created a rowdy scene by raising slogans against the proprietor Shri S.L. Bhatia, by saying "Bhatia Murdabad". Accordingly he was charge-sheeted and a domestic enquiry was held against him in which his guilt was established and so he was dismissed from service.

The case of the workman on the other hand is that there was no enquiry worth the name and he was not given any opportunity to produce his evidence. It is alleged that the management terminated his services because of his Trade Union activities.

The parties have produced evidence in support of their respective contentions. The dismissal of the workman can not be upheld on the basis of the domestic enquiry supposed to have been held against him because Shri K.K. Sharma, M.W. 1, Accountant in the respondent concern who is supposed to have held the enquiry has stated that although the enquiry proceedings Exhibit, M. bears his signatures yet no enquiry was held as a matter of fact. He has stated that Shri Rikhi who represent the management dictated the proceedings which were typed out and he merely signed them. The witness was declared hostile by the management and was cross-examined by them. The witness denied the suggestions that he was deposing against the management because his services have also been terminated by the management and he has raised an industrial dispute. Even if it be held that Shri Sharma is not speaking the truth in the Court for the reasons given by the management, it is not possible to hold that a proper enquiry was held against the workman because there is no other evidence to prove that a proper enquiry was held against the claimant.

The management have however, led evidence to prove that the claimant was actually guilty of the charges framed against him and therefore he is not entitled to be reinstated even if the domestic enquiry held against him is not found to be proper. Sarvshri Sohan Singh, Rajinder Singh, Ganga Bishan, M.W. 2 to M.W. 4, have appeared on behalf of the management to prove the alleged misconduct of the claimant. All of them state that on the warning of 11th October, 1967, at about 9.30 A.M. or so the claimant Shri Ram Nath raised slogan "Bhatia Murdabad", Sohan "Singh Murdabad", Chamchae "Murdabad". The evidence of these witnesses is

not very satisfactory. None of them even state what was the immediate cause for the provocation and why the claimant without any rhyme and reasons started raising the slogans on the morning of 11th October, 1967. Rajinder Singh, M.W. 3, admits in cross-examination that he was also a member of the union of the workmen of the respondent concern and a demand notice was given by the union on behalf of the claimant and he signed this notice. He further admits that another meeting was held on 19th January, 1968 and the minutes of that meeting were also signed by him. Shri Ganga Bishan, M.W. 4, has however, denied that he signed the minutes of that meeting although the minutes purport to bear his signature.

The workman has explained that the management was annoyed with him on account of his trade union activities and although no incident took place on 11th October, 1967, as alleged still he was wrongly charged for raising objectionable slogans which was just a pretext for getting rid of him and he was dismissed from service without holding any enquiry at all. The version, of the claimant is supported by Shri Dhanpat Rai, Compositor, W.W. 1 who is still in the service of the respondent and one Shri Ram Singh, W.W. 2, who is a truck owner and says that he happened to be present in the press on the day in question up to 11-45 A.M. and no incident took place till he remained there. After giving my careful consideration to the evidence produced by the parties I am of the opinion that the version given by the workmen appears to be correct. It appears that there was a tussle between the workmen and the management some time in the months of July, 1967. The claimant has explained that they were demanding bonus, increment, dearness allowance, holidays, wheat allowance and provident fund, etc., and the proprietor gave him one month's notice on 19th July, 1967 terminating his services against which his co-workmen protested and submitted an application copy Exhibit W.W. 3/4 calling upon the management to withdraw the notice and the copies of this application were sent to the Labour Commissioner, Labour Inspector, Wage Inspector under postal certificate Exhibit W.W. 3/5. This portion of the statement of the claimant has not been challenged in cross-examination. Since the claimant was the Vice-President of the union and they were making all sorts of demands, the management must have been annoyed with him. This is proved by the fact that the management tried to get rid of the claimant by giving him one month's notice in the month of July, but it was withdrawn under the pressure of the other workmen. The management could not be very happy with the activities of the claimant and it appears that they charged him for raising objectionable slogans on the morning of 11th October, 1967 and dismissed him after an enquiry which according to the Inquiry Officer himself was nothing but a farce. One of the workmen who know supports the management was at one time with the other workmen who were supporting the cause of the claimant and he (witness) signed the demand notice which the workmen submitted to the management on behalf of the claimant. The witness has not explained why he had joined the other workmen and supported the cause of the claimant if he was actually guilty of raising objectionable slogans. In my opinion it is, therefore, not possible to place any reliance upon such type of witnesses.

There is also a technical defect in the charge-sheet. The claimant has been charged for raising objectionable slogans on 12th October, 1967 which happens to be a closed day. According to the management the objectionable slogans were raised on the morning of 11th October, 1967 and not 12th October, 1967, but this mistake in the charge-sheet was not corrected before the so called enquiry started. Thus even according to the management the claimant was not guilty of the charge that he had raised objectionable slogans on 12th October, 1967 as mentioned in the charge-sheet actually framed against him. In view of all these reasons it is not possible to uphold the action of the management terminating the services of the claimant Shri Ram Lal. He is, therefore entitled to be reinstated. In my opinion the interest of justice would be met if he gets 50 per cent of his wages from the date of the termination of his services up to the date the award becomes enforceable. No order as to cost.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated : the 26th October, 1968.

No. 1984, dated the 18th November, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 26th October, 1968.

No. 10664-ASOIII-Lab-68/29719.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Electronics (P) Ltd., Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 70 of 1968

between

SHRI RAGHUNANDAN NATH, WORKMAN AND THE MANAGEMENT OF M/S ELECTRONICS (P) LTD., FARIDABAD

Present :

Shri Roshan Lal Sharma, for the workman.

Shri Mulekh Raj, Personnel Officer, for the management.

AWARD

Shri Raghuandan Nath was in the service of M/s Electronics (P) Ltd., Faridabad. His services were terminated and this gave rise to an industrial dispute. The President of India in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication, - *vide* Government Gazette Notification No. ID FD/20686, dated 5th August, 1968.

Whether the termination of services of Shri Raghuandan Nath was justified and in order? If not to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. The issues which arose from the pleadings of the parties were framed. It is, however, not necessary to decide the case on merits. Shri Roshan Lal Sharma who represent the workman has made a statement a compromise has been effected between the parties according to which the management would pay to the workman wages in lieu of earned leave, one month salary in lieu of notice period, 15 days wages as service compensation and that the workman has given up his claim for reinstatement and he has no other claim against the management. Shri Mulch Rai who represent the management has accepted the statement of Shri R. L. Sharma as correct. I therefore give my award accordingly. No order as to cost.

Dated 9th November, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 2012, dated 19th November, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 12 of the Industrial Disputes Act, 1947.

Dated 9th November, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 10618-ASOIII-Lab-68 29722 In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Elite Cinema, Hissar :-

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 72 of 1968

Between

SHRI SHAM BAHDUR, WORKMAN AND THE MANAGEMENT OF M/S ELITE CINEMA, HISSAR

Present :—

Shri Tek Chand Gupta, for the workmen.

Nemo, for the management.

AWARD

Shri Sham Bahadur was in the service of M/s Elite Cinema, Hissar, as a machineman. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes to this Court for adjudication, - *vide* Government Gazette Notification No. ID/HSR/35-A/68/21409, dated 19th August, 1968.

Whether the termination of services of Shri Sham Bahadur was justified and in order? If not to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman but no body appeared on behalf of the management on the date fixed for the purpose. *Ex parte* evidence of the workmen was, therefore, recorded.

The representative of the management appeared in the later part of the day and represented that he was unavoidably delayed. The representative of the workman was also present at that time and, therefore, on the request of the representative of the management the case was adjourned to 22nd October, 1968, for

further proceedings. On the date fixed the representative of the management was again absent, although he was awaited up to 2.40 P.M. At about 3 P.M. one Shri Girdhari Lal without any letter of authority from the management appeared and produced a medical certificate to the effect that Shri Lachman Dass Seth, Manager of the respondent Cinema was unable to appear on account of his illness. It was not possible to recognise the presence of Shri Girdhari Lal because he did not have any letter of authority authorising him to appear on behalfs of the management and it was, therefore, not possible to adjourn the case further.

The workman Shri Sham Bahadur has stated as his own witness on oath that he joined the respondent concern as a Chowkidar about 5 or 6 years ago and was then promoted as machineman and was getting Rs 96.00 P.M. He has stated that the management have terminated his service in the month of May, 1968 without giving him any notice or giving him any opportunity to show cause. He says that his services were terminated verbally and no order in writing was given to him. Since the management have not produced any evidence in rebuttal, there is no reason to doubt the sworn testimony of the workman and I, therefore, hold that the termination of his service was not justified and in order and he is entitled to be reinstated with continuity of service and full back wages. I give my award accordingly.

Dated the 9th November, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 1985, dated the 15th November, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 9th November, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 10613-ASOIII-Lab-68/29725.—In pursuance of the provisions Section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of Messrs The Steel and General Mills Co. Ltd., Sonepat.

**BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT
FARIDABAD**

Complaint No. 14 to 19 of 1967

between

**SHRI CHAND SINGH AND OTHERS WORKMEN AND THE MANAGEMENT OF
M/S THE STEEL AND GENERAL MILLS, CO. LTD., SONEPAT.**

Present:—Shri Mehar Singh Rathi, for the workmen.

Shri Mohan Lal Sharma, for the management.

AWARD

This order will dispose off six connected complaints Nos. 14 to 19 of 1967 under section 33A of the Industrial Disputes Act, 1947, filed by Sarvshri Chand Singh, Shiv Dayal, Sube Singh, Jamana Dass, Hari Chand and Tek Chand workmen of M/s Steel and General Mills Co. Ltd., Sonepat.

The facts of the case briefly stated are that the workmen of the respondent company through their General workers Union raised an industrial dispute with regard to the grant of dearness allowance due to the rising cost of living and the said dispute has been referred to this Court for adjudication.—*vld* Gazette Notification No. 136-SF-III-Lab-67, dated 21st March, 1967 and it has been registered as Reference No. 44 of 1967. It is alleged on behalf of the claimant that during the pendency of their dispute with regard to the payment of the dearness allowance the management have recruited three more persons and have raised the total strength of the workmen from 21 to 24 and after the recruitment of the new hands the management is giving work to these new hands while the old operators are being laid off and this adversely affects their earnings. It is, therefore, prayed on behalf of the workmen that this Court may decide the complaints and pass such orders as it may be deemed fit and proper to compensate the workmen for the period of their lay off.

Notice of these complaints was given to the management and the issues which arose from the pleadings of the parties were framed. It is, however, not necessary to decide these complaints on merits because Shri Mehar Singh Rathi the representative of the complaints has made a statement that the complaints may be permitted to withdraw their applications with regard to the claim for lay off so that they can claim the necessary relief from the appropriate authority. After making the statement the learned representative of the complaints has not stated what further relief he claims from this Court in these

applications. The learned representative of the claimants has also not been able to explain how the alleged recruitment of three new hands during the pendency of the industrial dispute regarding the grant of dearness allowance is a matter connected with the dispute. For this reason also I am of the opinion that there is no contravention of the provisions of section 33 of the Industrial Disputes Act and no complaint under section 33A of the said Act is competent. I gave my award in all the seven complaints accordingly.

No order as to costs.

The 17th September, 1968

P. N. THUKRAL

Presiding Officer,
Labour Court, Faridabad.

No. 1703 dated the 25th September, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required by section 33A read with section 15 of the Industrial Disputes Act, 1947.

The 17th September, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

The 28th November, 1968

No. 10615-ASO-III-Lab-68/29728.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of Messrs P. S. Jain Motors Co. (P) Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 63 of 1968

between

SARI PURAN CHAND, WORKMAN AND THE MANAGEMENT OF M/S P. S. JAIN MOTORS CO., (P) LTD., FARIDABAD.

Present :—

Shri Darshan Singh, for the workmen.

Shri D.C. Chadha, for the management.

AWARD

Shri Puran Chand was in the services of M/s P. S. Jain Motors Co., (P.) Ltd., Faridabad. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court, for adjudication,—*vide* Government Gazette Notification No. 1D/FD/17701, dated 2nd July, 1968.

Whether the termination of services of Shri Puran Chand was justified and in order. If not to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties. The management filed their written statement opposing the claim of the workmen that he had been wrongly dismissed and is entitled to be reinstated. The issues which arose from the pleadings of the parties were framed. It is, however, not necessary to decide the case on merits because a compromise has been reached between the parties. Shri Darshan Singh who represented the workmen has made a statement that the workmen has received all his dues from the management and he is not interested in pressing his claim for reinstatement or any other relief. I therefore, give my award accordingly.

No order as to costs.

The 9th November, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 1990, dated the 8th November, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 9th November, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.